IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11371 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

RAMJI MULJI THAKAR

Appearance:

1. Special Civil Application No. 11371 of 2001

MR HARDIK C RAWAL for Petitioner No. 1

MR NIRAV C THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/03/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Raval for the petitioner and Mr. Thakkar for the respondent.By way of this petition, the petitioner has challenged the award made by the labour court, Jamnagar in reference NO. 104

of 1999 dated 8th December, 2000 wherein the labour court has granted reinstatement on minimum time scale for the post of conductor but his service has been considered to be continuous for the purpose of retirement benefits. In this petition, rule has been issued by this Court on 11th December, 2001.

This Court (Coram : Ravi R. Tripathi,J.) has passed an order on 31st January, 2002 wherein learned advocate Mr. Thakkar for the petitioner has made a statement before the Court to the effect that the respondent workman is ready to forgo continuity of service granted by the impugned judgment and award of the labour court concerned and if the petitioner corporation considers his case for a fresh appointment, his client will have no grievance and he will abide by such modification of the award. Further, a statement was also made by Mr. Thakkar before this Court on 31st January, 2002 that the respondent may be given fresh appointment from the date of the award without forfeiting the PF amount and other contributions made by the respondent workman. After recording the statement made by Mr. Thakkar on behalf of the respondent, the matter was adjourned by this Court to 14th February, 2002.

In view of the statement made by Mr. Thakkar, learned advocate for the respondent workman, Mr. Raval, learned advocate appearing for the petitioner corporation has submitted that the labour court has not granted any amount of back wages and the labour court has, by way of punishment, ordered to put the respondent in the minimum time scale of pay and has granted only reinstatement but continuity has been given for the purpose of retirement benefits. As regards facts, he has submitted that the respondent workman has recovered fare from 17 passengers and has not issued tickets after collecting the fares and therefore, he was served with a charge sheet and ultimately after initiating the departmental inquiry, he has been dismissed from service. He also submitted that there was past record of the respondent workman. However, in view of the statement made by Mr. Thakkar, he has submitted that if the respondent is forgoing his claim for continuity of service and is prepared to accept the job as fresh employment losing past 23 years' service, same may be considered by this court and appropriate orders may be passed by modifying the award in question in that regard.

Mr. Thakkar for the respondent has submitted that the respondent has worked as a conductor for more than 23 years and now looking to his age, he is unable to

get job elsewhere and if he is not ordered to be reinstated, then, ultimately he and his family members will have to suffer and, therefore, he may be ordered to be appointed as fresh employee without continuity by modifying the award in that regard.

Considering the submissions made by the learned advocates for the parties and also considering the statement made by Mr. Thakkar before this court on 31st January, 2002 as reflected from the order dated 31st January, 2002, according to my opinion, it would be just and proper to modify the award in question by directing the corporation to reinstate the respondent workman as a fresh employee without any continuity of service but from the date of the award.

Accordingly, present petition is partly allowed. Award made by the labour court, Jamnagar in Reference No. 104 of 1999 dated 8th December, 2000 is modified as under:

It is directed to the petitioner corporation to reinstate the respondent workman as a conductor as fresh employee on minimum time scale without any continuity of his earlier service and also without disturbing his PF Contributions and gratuity amount which has been earned by rendering about 23 years of service upto the date of dismissal. It is also clarified that the respondent workman is entitled to get the last drawn monthly wages from the date of the award 8th December, 2000 till the date of his actual reinstatement. Accordingly, petitioner is directed to reinstate the respondent workman in service as conductor in terms of the award made by the labour court as modified by this Court, within one month from the date of receipt of copy of this order. It is also directed to the petitioner corporation to pay the last drawn monthly wages to the respondent workman from the date of the award 8th December, 2000 till the date of his actual reinstatement within two months from the date of receipt of copy of this order.

Award made by the labour court shall stand modified in aforesaid terms. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt.20.3.2002. (H.K. Rathod,J.)